

Attorney Docket No. VYAN001/01US

Patent

**STATEMENT UNDER 37 C.F.R. § 3.73(b)**

Applicant/Patent Owner: Mendocino Software, Inc.

Application No./Patent No: 10/614,347

Filed/Issue Date: July 8, 2003

Entitled: SYSTEM AND METHOD FOR BACKING UP A COMPUTER SYSTEM

Mendocino Software, Inc.

(Name of Assignee)

a corporation

(Type of assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1. ☒ the assignee of the entire right, title, and interest; or
2. ☐ an assignee of an undivided part interest

in the patent application/patent identified above by virtue of either

- A. ☐ An assignment from the inventor(s) of the patent application identified above. The assignment was recorded in the Patent and Trademark Office at Reel \_\_, Frame \_\_, or for which a copy thereof is attached.

OR

- B. ☒ A chain of title from the inventor(s) of the patent application identified above, to the current assignee as shown below:

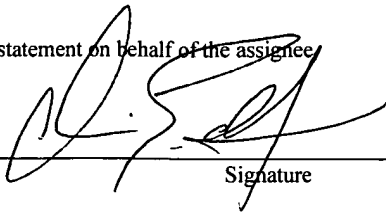
1. From: Gregory A. Becker To: Vyant Technologies, Inc.  
for which a copy thereof is attached.
2. From: Robert Condon To: Vyant Technologies, Inc.  
for which a copy thereof is attached.
3. From: David A. Knight To: Vyant Technologies, Inc.  
for which a copy thereof is attached.
4. From: David E. Medders To: Vyant Technologies, Inc.  
for which a copy thereof is attached.
5. From: Michael Rowan To: Vyant Technologies, Inc.  
for which a copy thereof is attached.
6. From: Vyant Technologies, Inc. To: Mendocino Software, Inc.  
for which a copy thereof is attached.

☐ Additional documents in the chain of title are listed on a supplemental sheet.

☒ Copies of assignments or other documents in the chain of title are attached.

The undersigned (whose title is supplied below) is empowered to sign this statement on behalf of the assignee.

Date: 3-5-04

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Christopher W. Eidler

\_\_\_\_\_  
Vice President Production Operation

ASSIGNMENT

Gregory A. Becker, residing at 4606 Palisade Drive, Austin, TX 78731 (referred to as "Assignor") has made an invention(s) (the "Invention(s)") set forth in an applications for patent of the United States, entitled

**SYSTEM AND METHOD FOR BACKING UP A COMPUTER SYSTEM,**

and which are:

- (1) a provisional application bearing Application No. 60/395,611, and filed on July 15, 2002; and
- (2) a non-provisional application bearing Application No. 10/614,347, and filed on July 8, 2003.

**WHEREAS, Vyant Technologies, Inc.,** a corporation duly organized under and pursuant to the laws of Delaware, and having its principal place of business at 2100 Reston Parkway, Reston, Virginia 20191 (the "Assignee"), is desirous of acquiring the entire right, title, and interest in: the Invention(s); the applications for patent identified in paragraphs (1) and (2); the right to file applications for patent of the United States or other countries on the Invention(s); any application(s) for patent of the United States or other countries claiming priority to these applications; any provisional or other right to recover damages, including royalties, for prior infringements of these applications; and any patent(s) of the United States or other countries that may be granted therefor or thereon;

**WHEREAS,** the Assignor, pursuant to a first Employment Agreement, has assigned and is under a continuing obligation to assign his entire right, title and interest in and to the Invention(s) to Storagecom LLC;

**WHEREAS,** the first Employment Agreement was assigned to Capitol Ventures 2010, LLC by Storagecom LLC;

**WHEREAS,** the first Employment Agreement was assigned to WF-Leasing, Inc. by Capitol Ventures 2010, LLC;

**WHEREAS,** by way of corporate name change, WF-Leasing, Inc. became the Assignee; and

**WHEREAS,** the Assignor, pursuant to a second Employment Agreement with the Assignee, has assigned and is under a continuing obligation to assign his entire right, title and interest in and to the Invention(s) to the Assignee.

**NOW, THEREFORE,** for good and sufficient consideration, the receipt of which is hereby acknowledged, and to the extent that the Assignor has not done so already via a prior agreement with the Assignee, or if the Assignor has already done so via a prior agreement with the Assignee then in confirmation of any obligation to do so in said prior agreement, the Assignor has sold, assigned, transferred, and set over, and by these presents does sell, assign, transfer, and set over, unto the Assignee, its successors, legal representatives, and assigns, the Assignor's entire right, title, and interest in:

- (a) the Invention(s);
- (b) the applications for patent identified in paragraphs (1) and (2);
- (c) the right to file applications for patent of the United States or other countries on the Invention(s), including all rights under the Hague Convention, the Paris Convention for the Protection of Industrial Property, and under the Patent Cooperation Treaty;
- (d) any application(s) for patent of the United States or other countries claiming the Invention(s);

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- (e) any application(s) for patent of the United States or other countries claiming priority to either of the applications for patent identified in paragraphs (1) and (2) or any application(s) for patent claiming the Invention(s), including any division(s), continuation(s), and continuation(s)-in-part;
- (f) any provisional or other right to recover damages, including royalties, for prior infringements of any application for patent identified in the proceeding paragraphs (b)-(e); and
- (g) any patent(s) of the United States or other countries that may be granted for or on any application for patent identified in the preceding paragraphs (b) - (e), including any reissue(s) and extension(s) of said patent(s).

The above-granted rights, titles, and interests are to be held and enjoyed by the Assignee, for its own use and behalf and the use and behalf of its successors, legal representatives, and assigns, as fully and entirely as the same would have been held and enjoyed by the Assignor had this sale and assignment not been made.

The Assignor hereby represents to the Assignee, its successors, legal representatives, and assigns, that, at the time of execution and delivery of these presents, or if applicable, at such time said prior agreement was executed, the Assignor is the sole and lawful owner of the entire right, title, and interest in and to the Invention(s), that the Invention(s) are unencumbered, except, if applicable, by obligation to assign in accordance with said prior agreement, and that the Assignor has good and full right and lawful authority to sell and convey the same in the manner set forth herein.

The Assignor hereby covenants and agrees to and with the Assignee, its successors, legal representatives, and assigns, that the Assignor will sign all papers and documents, take all lawful oaths, and do all acts necessary or required to be done in connection with any and all proceedings for the procurement, maintenance, enforcement and defense of the Invention(s), said applications, and said patents, including interference proceedings, without charge to the Assignee, its successors, legal representatives, and assigns, but at the cost and expense of the Assignee, its successors, legal representatives, and assigns.

The Assignor hereby requests the Commissioner of Patents to issue said patents of the United States to the Assignee for the sole use and behalf of the Assignee, its successors, legal representatives, and assigns.

Date: 2/5/04 By: Gregory A. Becker  
Gregory A. Becker

State of California )  
County of San Mateo )  
On February 5, 2004, before me, Marie A. Stella, Notary Public, personally appeared Gregory A. Becker, personally known to me or proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they, executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Marie A. Stella  
Signature of Notary Public

Place Notary Seal Above



ASSIGNMENT

Robert Condon, residing at A1 Black Oak Dr., Nashua, NH 03062 (referred to as "Assignor") has made an invention(s) (the "Invention(s)") set forth in applications for patent of the United States, entitled

**SYSTEM AND METHOD FOR BACKING UP A COMPUTER SYSTEM,**

and which are:

- (1) a provisional application bearing Application No. 60/395,611, and filed on July 15, 2002; and
- (2) a non-provisional application bearing Application No. 10/614,347, and filed on July 8, 2003.

**WHEREAS, Vyant Technologies, Inc.,** a corporation duly organized under and pursuant to the laws of Delaware, and having its principal place of business at 2100 Reston Parkway, Reston, Virginia 20191 (the "Assignee"), is desirous of acquiring the entire right, title, and interest in: the Invention(s); the applications for patent identified in paragraphs (1) and (2); the right to file applications for patent of the United States or other countries on the Invention(s); any application(s) for patent of the United States or other countries claiming priority to these applications; any provisional or other right to recover damages, including royalties, for prior infringements of these applications; and any patent(s) of the United States or other countries that may be granted therefor or thereon;

**WHEREAS,** the Assignor, pursuant to an Employment Agreement, has assigned and is under a continuing obligation to assign his entire right, title and interest in and to the Invention(s) to Storagecom LLC;

**WHEREAS,** the Employment Agreement was assigned to Capitol Ventures 2010, LLC by Storagecom LLC;

**WHEREAS,** the Employment Agreement was assigned to WF-Leasing, Inc. by Capitol Ventures 2010, LLC; and

**WHEREAS,** by way of corporate name change, WF-Leasing, Inc. became the Assignee.

**NOW, THEREFORE,** for good and sufficient consideration, the receipt of which is hereby acknowledged, and to the extent that the Assignor has not done so already via a prior agreement with the Assignee, or if the Assignor has already done so via a prior agreement with the Assignee then in confirmation of any obligation to do so in said prior agreement, the Assignor has sold, assigned, transferred, and set over, and by these presents does sell, assign, transfer, and set over, unto the Assignee, its successors, legal representatives, and assigns, the Assignor's entire right, title, and interest in:

- (a) the Invention(s);
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- (d) any application(s) for patent of the United States or other countries claiming the Invention(s);
- (e) any application(s) for patent of the United States or other countries claiming priority to either of the applications for patent identified in paragraphs (1) and (2) or any application(s) for patent claiming the Invention(s), including any division(s), continuation(s), and continuation(s)-in-part;

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ASSIGNMENT

David A. Knight, residing at 3213 Druid Way, Flower Mound, TX 75028 (referred to as "Assignor") has made an invention(s) (the "Invention(s)") set forth in an applications for patent of the United States, entitled

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and which are:

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- (f) any provisional or other right to recover damages, including royalties, for prior infringements of any application for patent identified in the preceding paragraphs (b)-(e); and
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The Assignor hereby requests the Commissioner of Patents to issue said patents of the United States to the Assignee for the sole use and behalf of the Assignee, its successors, legal representatives, and assigns.

Date: 2/5/04

By: David A. Knight  
David A. Knight

State of California )  
County of San Mateo ) ss.

On February 5, 2004, before me, Marie A. Stella, Notary Public personally appeared David A. Knight, personally known to me or proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Marie Stella  
Signature of Notary Public

Place Notary Seal Above



ASSIGNMENT

David E. Medders, residing at 5634 W. Amherst Ave., Dallas, TX 75209 (referred to as "Assignor") has made an invention(s) (the "Invention(s)") set forth in applications for patent of the United States, entitled

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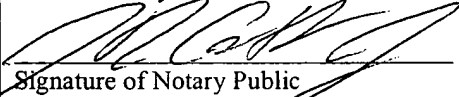
Date: 2-5-04

By:   
David E. Medders

State of Texas )  
County of Dallas ) ss.

On 5 Feb 2004, before me, J RICH CAWTHRON JR, personally appeared David E Medders, personally known to me or proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

  
Signature of Notary Public



ASSIGNMENT

Michael Rowan, residing at 14 Estes St., Amesbury, MA 01913 (referred to as "Assignor") has made an invention(s) (the "Invention(s)") set forth in applications for patent of the United States, entitled

**SYSTEM AND METHOD FOR BACKING UP A COMPUTER SYSTEM,**

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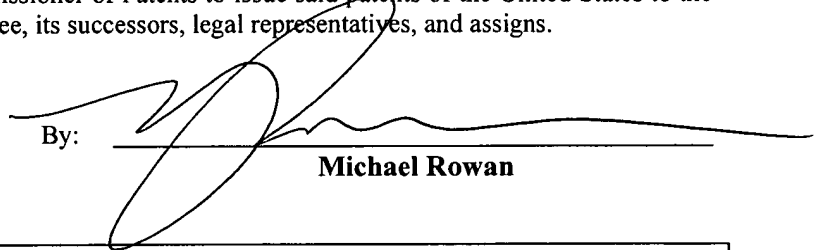
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The Assignor hereby represents to the Assignee, its successors, legal representatives, and assigns, that, at the time of execution and delivery of these presents, or if applicable, at such time said prior agreement was executed, the Assignor is the sole and lawful owner of the entire right, title, and interest in and to the Invention(s), that the Invention(s) are unencumbered, except, if applicable, by obligation to assign in accordance with said prior agreement, and that the Assignor has good and full right and lawful authority to sell and convey the same in the manner set forth herein.

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The Assignor hereby requests the Commissioner of Patents to issue said patents of the United States to the Assignee for the sole use and behalf of the Assignee, its successors, legal representatives, and assigns.

Date: 3/4/04

By:   
**Michael Rowan**

State of MASS )  
 County of Essex ) ss.

On march 4 2004, before me, KEVIN F Rodgers, personally appeared Michael T Rowan personally known to me or proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

  
 Signature of Notary Public Coworker

Place Notary Seal Above

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## INTELLECTUAL PROPERTY ASSIGNMENT

This INTELLECTUAL PROPERTY ASSIGNMENT (this "Assignment") is made and entered into this 28 day of January, 2004 by and between Vyant Technologies, Inc., a Delaware corporation having a place of business at 2100 Reston Parkway, Suite 202, Reston, VA 20191 ("Assignor"), and Mendocino Software, Inc, a company organized under the laws of Delaware having a place of business at 2800 Sand Hill Road, Suite 250, Menlo Park, CA 94025 ("Assignee") (each a "Party," and collectively, the "Parties").

WHEREAS, Assignor, Assignee and certain stockholders of the Assignor are parties to that certain Asset Purchase Agreement dated as of the date hereof (the "Purchase Agreement") (capitalized terms used herein but not otherwise defined herein shall have the meanings set forth in the Purchase Agreement);

WHEREAS, Assignor is the owner of Company Intellectual Property, as set forth in the Asset Purchase Agreement;

WHEREAS, pursuant to the Purchase Agreement, Assignee agreed to purchase the Purchased Assets from Assignor, including all of Assignor's right, title and interest in and to the Company Intellectual Property; and

WHEREAS, the execution and delivery of this Assignment is a condition to Closing.

NOW THEREFORE, for the consideration set forth in the Purchase Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, subject to the terms and provisions of the Purchase Agreement, the Parties agree as follows:

1. Assignment. Effective upon the Closing, Assignor hereby assigns to Assignee all of Assignor's right, title and interest in and to the Company Intellectual Property, including all rights therein provided by international conventions and treaties, and the right to sue for past, present and future infringement or misappropriation thereof.

2. Further Assurances. Upon Assignee's reasonable request, Assignor shall take all actions and execute all documents necessary or desirable to record and perfect the interest of Assignee in and to the Company Intellectual Property, and shall not enter into any agreement in conflict with this Assignment.

3. Severability. If any term or other provision of this Assignment is invalid, illegal or incapable of being enforced by any Law or public policy, all other terms and provisions of this Assignment shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated by this Assignment is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Assignment so as to effect the original intent of the parties as closely as

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possible in an acceptable manner in order that the transactions contemplated by this Assignment are consummated as originally contemplated to the greatest extent possible.

4. Counterparts. This Assignment may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.

5. Governing Law. This Assignment shall be governed by, and construed in accordance with, the laws of the State of California applicable to contracts executed in and to be performed in that State. All actions and proceedings arising out of or relating to this Assignment may be heard and determined in any California state or federal court sitting in the County of San Mateo. The parties hereto hereby (a) submit to the non-exclusive jurisdiction of any state or federal court sitting in the County of San Mateo for the purpose of any Action arising out of or relating to this Assignment brought by any party hereto, and (b) irrevocably waive, and agree not to assert by way of motion, defense, or otherwise, in any such Action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the Action is brought in an inconvenient forum, that the venue of the Action is improper, or that this Assignment or the transactions contemplated by this Assignment may not be enforced in or by any of the above-named courts.

6. Scope. Notwithstanding any other provision of this Assignment to the Contrary, nothing contained herein shall in any way supercede, modify, replace, enlarge, exceed, expand, limit, reduce, diminish or in any way affect the provisions of the Asset Purchase Agreement, nor shall this Assignment expand or enlarge any of the remedies available to the Purchase under the Asset Purchase Agreement. In the event of any conflict between the terms of this Assignment and the Asset Purchase Agreement, the Asset Purchase Agreement shall govern and control. This Assignment is intended only to effect the transfer of the Purchased Assets sold and purchased under the Asset Purchase Agreement and shall be governed in accordance with the terms of the Asset Purchase Agreement.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, each Party has caused this Assignment to be executed  
as of the date first written above by its duly authorized officer.

ASSIGNOR:

VYANT TECHNOLOGIES, INC.

By: 

Name: HAIM McLANNON

Title: CEO

ASSIGNEE:

MENDOCINO SOFTWARE, INC.

By: \_\_\_\_\_

Name: Peter Levine

Title: President

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IN WITNESS WHEREOF, each Party has caused this Assignment to be executed  
as of the date first written above by its duly authorized officer.

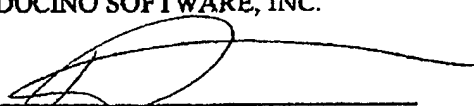
ASSIGNOR:

VYANT TECHNOLOGIES, INC.

By: \_\_\_\_\_  
Name:  
Title:

ASSIGNEE:

MENDOCINO SOFTWARE, INC.

By:   
Name: Peter Levine  
Title: President

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Signature Page to Intellectual Property Assignment

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